IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13/10/2003

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The Honourable Mr. Justice P. SHANMUGAM
and
The Honourable Mr. Justice T.V. MASILAMANI

Criminal Appeal No.729 of 1995

1. Moses Siluvai Nathan
2. Gnanaih
3. Sekar .. Appellants

-Vs-

State rep. by the
Inspector of Police,
Poompuhar
(Porayar Police Station
Crime No.148 of 1989) .. Respondent

Prayer : Appeal against the judgment passed by the Sessions Judge, Nagapattinam Quaid-e-Milleth District, Nagapattinam in S.C. No.155 of 1 993 dated 22.8.1995.

!For Appellant : Mr. Rubert J. Barnabas

^For Respondent : Mr. V.M.R. Rajendran,
Addl. Public Prosecutor.

:J U D G M E N T

P. SHANMUGAM, J.

The appellants were the accused before the Sessions Court in Sessions Case No.155 of 1993 for having committed the offence punishable under Sections 302, 324 and 326 of the Indian Penal Code. The learned Sessions Judge found the accused guilty and convicted them, thereby imposing a sentence of one year rigorous imprisonment on A-1 and A-3 under Section 324, I.P.C., a sentence of three years' rigorous imprisonment on A-2 under Section 326, I.P.C. and a sentence of life imprisonment on A-1 to A-3 under Section 302, I.P.C. The above appeal is against this judgment.
2.The brief facts of the case of the prosecution are as follows :-
On account of the prior enmity with the deceased, one

Subramaniam of Karadipattu Village, with a common intention to murder him, on 15.4 .1989, at 8 am, Accused Nos.1 and 3, using Aruvals and Accused No.2, using Alakku Aruval, cut the deceased Subramaniam and also P.W.2 and P.W.3 who came there to rescue the deceased. Consequent to the grievous injuries suffered by him, Subramaniam died on the spot. Based on the complaint, Ex.P.12 given by P.W.1, Crime No.148 of 1989 was registered under Sections 147, 148, 323, 324, 326, 355 and 302, I.P.C. at 2 pm on 15.4.1989 against nine accused, including the appellants herein. The Inspector of Police, P.W.13, visited the scene of occurrence at 2.15 pm, prepared the rough sketch and observation mahazar, Ex. P.15, recovered the material objects and after completion of the inquest, the body of the deceased was sent for post mortem examination. After conducting the enquiry and examining the witnesses, including the injured witnesses, he recorded their statements. Thereafter, A-2, A-3 and other accused were arrested on 18.4.1989 and A-1 was arrested on 21.6.1989 and all of them were remanded. On 19.4.1989, P.W.13 recovered M.O.1, Alakku Aruval and M.O.2, Aruval as per the admissible portion of the confession statements of A-2 and A-3. On the basis of the final report submitted before him, the learned Sessions framed charges only against appellants 1, 2 and 3 for an offence under Sections 302, 324 and 326, I.P.C.

3. The further case of the prosecution is that on the basis of the complaint given by A-1 as against P.W.2 and P.W.3 as also against the deceased Balasubramaniam and one Balakrishnan under Section 326 I.P. C. at 11 am on 15.4.1989 to the effect that there was a quarrel in the evening of 14.4.1989 and that in continuation of the said quarrel, on 15.4.1989, at 8 am, P.W.2, Panneerselvam, P.W.3, Veerasamy and the deceased Subramaniam caused damage to their haystack and that in the further quarrel that ensued, P.W.2 Panneerselvam cut the neck of the complainant (A-1) and that when he tried to pr event the said attack, the aruval fell on his hand and his fingers got cut. According to him, P.W.3, Veerasamy also cut on his left leg and the deceased Subramaniam also cut on his head. The complainant further stated that Balakrishnan had also participated in the offence by cutting him. The further complaint of A-1 is that he came to the hospital and the said complaint was given when the Sub Inspector of Police came and enquired.

4. The complaint given by A-1, which was registered as Crime No.147 of 1989, was referred as a mistake of fact.

5. The learned Sessions Judge, after considering the evidence of P. W.1 to P.W.15, the exhibits Ex.P.1 to Ex.P.16 and the material objects, M.O.1 and M.O.2, found the accused guilty and imposed the sentence as set out above. The appeal is against this judgment.

6. Learned counsel appearing on behalf of the appellants made elaborate submissions and the summary of the points raised by him are set out below :-
(1) The prosecution has not fixed the place of occurrence.
(2) There was inordinate, unexplained delay in lodging the complaint and forwarding the First Information Report to the Magistrate.
(3) The statements of the eye witnesses are artificial and improbable.

(4) There is discrepancy between the complaint before the police and the statement made before the Village Administrative Officer.
(5) The non-examination of independent eye witnesses available at the scene of occurrence has cast a serious doubt on the case of the prosecution and the prosecution rested solely on the evidence of highly interested witnesses.
(6) The recovery of material objects was not done in the presence of independent witnesses.
(7) The injuries on the accused were not explained.

7. On the above submissions, learned counsel further pleaded that there are other infirmities in the case of the prosecution like ulterior motive on the part of the prosecution in proceeding with the complaint of P.W.1 and referring the complaint of A-1 as a mistake of fact. According to him, there was an inordinate delay of nearly four years in filing the charge sheet and the rough sketch is also not in conformity with the evidence of the prosecution. He further submitted that it was the injured party who were the aggressors and the accused were only the victims at the hands of the injured party. Moreover, it is submitted that the accused immediately lodged a complaint as to the assault made on them without any delay. For all these reasons, the learned counsel submitted that there is serious doubt as to the occurrence as narrated by the prosecution and he, therefore, prayed to set aside the judgment of the trial court and consequently to acquit the appellants.

8. Learned Additional Public Prosecutor submitted that the injuries found on A-1 and A-3 were clearly explained by P.W.1 in her evidence. According to him, after considering the case and the counter, the police are entitled to refer the case of one party as a mistake of fact if they have not made out their case. In this case, the complaint preferred by A-1 has been referred to as a mistake of fact and neither the same has been questioned nor the accused have chosen to prefer any private complaint in order to vindicate their stand. He further submitted that the place of occurrence has been clearly established as per the evidence let in on the side of the prosecution, including the observation mahazar, Ex.P.2, according to which the occurrence had taken place in front of the deceased Subramaniam's house and that there is no discrepancy with reference to the place of occurrence as alleged by the counsel for the appellants. According to him, P.W.2 was admitted in the hospital at 8.30 pm and the delay that had occurred in preferring the complaint has been explained by P.W.1 clearly. He further submitted that there is no delay in sending the F.I.R. to the Magistrate and the evidence of the constable, P.W.11 is to the effect that since the Magistrate was not in his house, he had to wait at the residence of the Magistrate so as to hand over the F.I.R. and hence, there was no delay on this score either. According to the learned Additional Public Prosecutor, the overt acts attributable on the part of the accused have been spoken to clearly by P.W.1, P.W.2 and P.W.3 and even though they are related to the deceased, their evidence cannot simply be discarded on that sole ground, and the Court has to take into account other factors as well, like the background, the number of residents in that village, etc. According to him, the village consists of about 20 huts with 200 people, as stated by the investigating officer, but

however, no questions had been asked to the investigating officer on the availability of other independent witnesses at the scene of occurrence. He ultimately submitted that considering the grievous injuries caused by the accused on account of the admitted previous enmity, the case against the accused had been proved beyond any reasonable doubt. In these circumstances, he submitted that no interference need be caused into the judgment of the trial court and prayed that the appeal be dismissed.

9. We have heard the counsel and considered the matter carefully.

10. In our view, the investigation in this case has left some important questions unanswered. They are :-

(1) The observation mahazar, Ex.P.2 says that the blood from the body of the deceased had spread on the whole of the ground and had gone to the front portion of the house, "gpnujk; fplf;Fk; ,lj;jpy; jiu KGtJk; ,uj;jk; tHpe;J gutp Kd;thry; tHpahf tHpe;J Xo ciwe;J fhzg;gLfpwJ/" The mahazar further says that they lungi and the underwear worn by the deceased were drenched with blood.

(2) P.W.13, the investigating officer, has stated that he had recovered M.O.1 under Ex.P.4, Mahazar and M.O.2 under Ex.P.6, Mahazar as per the admissible portion of the confession statement given by A-2 and A-3. No weapon said to have been used by A-1 has been recovered from him. The material objects were not requisitioned to be sent for chemical analysis and there is no chemical report on these materials objects either. The failure on the part of the investigating officer to get these reports has created serious doubt as to the place of occurrence and the weapons used for the commission of the offence.

(3) The occurrence is said to have taken place at 8 pm on 15.4.1989 as per the Express F.I.R., Ex.P.12. P.W.1, P.W.2 and P.W.3 say that the occurrence had taken place at about 6.30 am on 15.4.1989. However, P.W.1 is said to have given a statement only at 1.30 pm on 15.4.19 89. It has to be stated that even before this complaint, A-1 had preferred his complaint at 11 am on 15.4.1989 before the Sub Inspector of Police, who had gone to the hospital at the instance of the intimation given by the doctor. However, there is no explanation as to why, when P.W.2 and P.W.3, the injured parties, were also admitted in the same hospital, the Sub Inspector of Police did not choose to get their statements or complaint.

(4) P.W.9, the doctor who had treated P.W.2 and A-1, in his crossexamination, has stated that within half-an-hour of his completing the treatment to P.W.2, he had sent an intimation to the police station which is only 200 feet away from the hospital. P.W.1, who is the complainant, has stated that Nattamai Natesan came and asked her whether she had given a complaint and therefore, she went and informed the Village Administrative Officer at 12.15 pm on 15.4.1989 and that he had taken a statement from her

and she had put her signature in that statement at about 1.30 pm on that day. There is no acceptable explanation for the inaction on the part of P.W.1 from 7 am to 2 pm, when the case was registered.

11. In the above circumstances, we are of the view that there is

perceptible delay in lodging the complaint, Ex.P.12 and further, this complaint had come into existence only subsequent to the complaint given by A-1, Ex.P.15. The explanation furnished by P.W.1 in her chiefexamination, for the delay is unacceptable. Though it is submitted that P.W.1 is a rustic village woman, it is very difficult to countenance her inaction of keeping the body of her brother, he having been cut and murdered, without even thinking of making a complaint. In the light of the submission made by the counsel for the appellants that the prosecution has shifted the scene of occurrence to a place in front of the house of P.W.1 in order to make it appear that the accused were the aggressors, has force. P.W.13, the investigating officer, has not chosen to send the blood stained soil, the blood stained coconut leaf and the blood stained jasmine plants which were seized by him. Therefore, there is serious doubt as to the actual place where the occurrence took place.

12. In this context, it has to be remembered that the case of A-1 is that it was P.W.2 and P.W3, along with the deceased and one Balakrishnan, who initially cut him. As per the evidence of P.W.9, the doctor who had treated A-1, A-1 had suffered cut injury on the left hand to an extent of 15 x 4 cm. x hand deep and his wrist was hanging consequent to the cut and he had suffered cut injury of 1 x 1/2 x 1/2 cm. on the back side of his left knee. Besides, he had also suffered a cut injury of 1 x 1/4 inch x bone deep on the right side of his head. The doctor has opined that there were fractures in the left palm of A-1 and that the first of the injuries is a grievous one. Similarly, there were injuries on Sekar, A-3 in this cas e. These injuries found on the accused, in our view, have not been properly explained. Further, there is no explanation in the evidence of P.Ws.1, 2 and 3 as to how these injuries had been caused to A-1 and A-3. It is pertinent to note that P.W.13, the investigating officer, in his evidence, has stated that when he examined P.W.2 in reference to the complaint of the accused in Crime No.147 of 1989, he had stated that the deceased was holding an aruval and that the deceased Subramaniam came out of the house and cut A-1 and caused injuries and thereafter, A-1 cut Subramaniam.

13. In the light of this evidence, we very much doubt that the incident would have actually occurred as stated by the prosecution. It is in this context that we have to hold that the evidence of P.Ws.1, 2 and 3, who are close relatives of the deceased Subramaniam, being his sister, brother and father, cannot be relied upon without close scrutiny. The descriptive statement of P.W.1 as to the number of cuts inflicted by the accused on the deceased and her inaction to intervene in this occurrence or to make a complaint for more than four hours after the occurrence casts serious doubt as to her actual presence at the spot and his witnessing the occurrence.

14. For the above reasons, we are clearly of the view that the prosecution has not proved the case against the appellants beyond all reasonable doubt and hence, the benefit, for the reasons stated above, should be given to the appellants. The learned Sessions Judge has not properly approached this case. In the above circumstances, the judgment of the Sessions Court is hereby set aside and the appeal is allowed. The accused are directed to be released forthwith and the bail bonds executed by them, if any, shall stand cancelled.

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To

1. The Sessions Judge, Thanjavur at Nagapattinam.
2. Judicial Magistrate No.II, Mayiladuthurai.
3. - Do - through the Chief Judicial Magistrate,
East Thanjavur at Nagapattinam.
4. The Superintendent, Central Prison, Tiruchirappalli.
5. The District Collector, Nagapattinam.
6. The D.I.G. of Police, Chennai.
7. The Public Prosecutor, Chennai.
8. The Inspector of Police,
Poompuhar, Porayar Police Station.